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February 11, 2008

Stuart Drown  
Executive Director  
Little Hoover Commission  
925 L Street, Suite 805  
Sacramento, CA 95814

Dear Mr. Drown:

Thank you for inviting me to testify at the Little Hoover Commission's hearing on the recent juvenile justice realignment. We appreciate the Commission's attention to this important and timely issue. In responding below to the Commission's concerns I have sought input from other prosecutors in the Sacramento District Attorney's Office as well as other prosecutors who serve on the California District Attorneys Association's Juvenile Justice Committee. If there is anything else you need from me before my scheduled testimony on February 28, 2008 please do not hesitate to ask.

**THE REALIGNMENT ISSUES THAT PRESENT THE GREATEST CHALLENGES TO DISTRICT ATTORNEYS AND WHAT WILL BE REQUIRED TO ADDRESS THEM, INCLUDING ANY MODIFICATIONS THE STATE COULD MAKE TO IMPROVE ITS JUVENILE JUSTICE POLICIES.**

Pursuant to Welfare and Institutions Code Section 202 the first stated purpose of California's juvenile court law is to provide for the protection and safety of the public. This is a task that California's juvenile prosecutors have put at the forefront of their responsibilities. Realignment has taken away one of the most effective tools prosecutors have traditionally had to effectuate this responsibility.

The challenge for prosecutors is how to continue to provide for the protection and safety of the public without the availability of this traditional tool. In some counties and in some cases there is likely to be an increase in the filing of motions to remand juveniles to adult court in cases where prior to September 1, 2007 these juveniles would likely have been committed to the Division of Juvenile Justice (DJJ). Without this tool in some cases there would be no remedy

available to protect the public from a dangerous offender who on his/her most recent offense did not commit a 707(b) offense or a listed sex offense.

The realistic likelihood in many counties will be that these juveniles will be placed back in their communities after a brief detention period with more intensive probation services. That is assuming, of course, that counties are able to provide such intensive supervision.

In Sacramento County the practical effect of realignment not only impacts some otherwise potential DJJ commitments but also the availability to utilize some out of state placement programs. Most juveniles committed to these programs (which generally require the agreement of the juvenile to attend) cooperate because of their concern that otherwise they would be committed to DJJ. Where realignment has taken that DJJ commitment option away it has as a practical matter, in some cases, also eliminated what has often been a very effective dispositional alternative, out of state placement programs.

**THE CHALLENGES IN PLACING YOUTH OFFENDERS IN COUNTIES THAT LACK A FULL CONTINUUM OF FACILITIES AND SERVICES NECESSARY TO EFFECTIVELY IMPLEMENT THE REALIGNMENT, AND, THE CHALLENGES OF PLACING OFFENDERS WITH PRIOR SERIOUS OFFENSES ONCE THEY HAVE EXHAUSTED PLACEMENT OPTIONS AT THE LOCAL LEVEL.**

The issue as stated here pretty much amplifies the problem. How can counties deal with youthful offenders when local options have been exhausted and they are precluded from committing these offenders to DJJ? We as prosecutors cannot create options that are simply not there. This is where realignment has severely compromised the ability of prosecutors to effectively help protect the public from certain dangerous youthful offenders. Often it is in the best interests of the juvenile to be committed to DJJ, because the state has better resources and better ability to create more programs than many counties have presently or could ever expect to have in the foreseeable future.

**THE CAPACITY OF COUNTIES TO EXPAND OPTIONS TO PROVIDE EFFECTIVE SERVICES TO YOUTHFUL OFFENDERS THAT WILL IMPROVE PUBLIC SAFETY AND REDUCE RECIDIVISM, PARTICULARLY FOR THE OLDER, MORE SERIOUS OFFENDERS.**

This too is more of a political concern the response to which will vary from county to county depending on the resources available. In Sacramento County it is presently unclear if any options will be added to provide effective services to older, more serious youthful offenders. It is important to remember that, for the most part, those offenders who before September 1, 2007 would have been DJJ commitments, but not after, were committed to DJJ because there were no local options available to deal with the seriousness of their delinquency.

New programs to deal with older, more serious offenders cannot be developed overnight. In those situations where extended detentions need to accompany such programs facilities may need to be built. Such facilities need the approval of the community where they are intended to be placed which has generally been a politically difficult and a very lengthy process.

**THE LIKELIHOOD THAT DISTRICT ATTORNEYS WILL FILE MORE SERIOUS CHARGES AGAINST JUVENILE OFFENDERS OR EXPAND DIRECT FILING INTO THE ADULT COURT SYSTEM TO CIRCUMVENT THE RESTRICTIONS ON PLACEMENTS FOR YOUTH IN STATE FACILITIES.**

Prosecutors are always ethically bound by the limits of what the evidence establishes when deciding what charges should be filed. Realignment has obviously not changed that ethical responsibility. Hence, it is unlikely, that prosecutors will file more serious charges post September 1, 2007 than they would otherwise have filed before realignment.

It would also appear very unlikely that prosecutors would or even could expand direct filing into the adult court system, to circumvent the above restrictions. Most cases which thus far have motivated prosecutors to directly file are serious cases where the penal violations are listed in Welfare and Institutions Code Section 707(b). These are the same offenses for which, under realignment, juvenile courts still have the authority to commit youthful offenders to DJJ. In other words, realignment itself has not impacted the ability of a juvenile court to commit a youthful offender to DJJ for the commission of a 707(b) offense. These offenses, in general, are the same sort of offenses that prosecutors have already been directly filing where the seriousness dictates such action. It makes no sense to directly file cases where a DJJ commitment is still possible and, presumably, still appropriate.

That is not to say that the realignment will not in some indirect manner increase direct filing by some District Attorney Offices. The realignment may be viewed by many prosecutors as more evidence to support the increasing lack of confidence that they have in the ability of DJJ to effectively protect the public. Where this is the case some prosecutors may very well turn to direct filing to better effectuate their statutory mandate to provide for the protection and safety of the public.

Very truly yours,

Rick Lewkowitz  
Supervising Deputy District Attorney